

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

PEDRO MARQUEZ,

Defendant.

12-Cr-712 (SHS)

MEMORANDUM &
ORDER

SIDNEY H. STEIN, U.S. District Judge.

Defendant Pedro Marquez has moved for the fourth time for a reduction in his sentence under the compassionate-release statute, 18 U.S.C. § 3582(c)(1)(A). (ECF No. 748.) Because Marquez's present motion does not establish extraordinary and compelling reasons for a sentence reduction and the section 3553(a) factors do not favor a sentence reduction, the motion is denied.

I. BACKGROUND

On June 19, 2014, the Court sentenced defendant Pedro Marquez to 120 months' incarceration after he pleaded guilty to one count of conspiracy to distribute 500 grams or more of cocaine in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846. (ECF No. 483.) He is currently serving his sentence at the Federal Correctional Institution in Fort Dix, New Jersey (FCI Fort Dix). Defendant's present motion to reduce his sentence follows three prior requests that the Court denied. (See ECF Nos. 680, 706, 721.)

On June 19, 2020, Marquez filed his first motion to reduce his sentence under the compassionate release statute. (ECF No. 680.) The government opposed the motion. (ECF No. 683.) On July 16, 2020, the Court denied Marquez's motion, holding that (i) Marquez had failed to establish extraordinary and compelling reasons for a sentence reduction and (ii) that the section 3553(a) factors did not favor a sentence reduction. (ECF No. 685.)

Five months later, Marquez filed a second compassionate release motion. (ECF No. 706.) In that motion, Marquez provided additional health information, reporting a BMI of 32 kg/m². (ECF No. 706 at 3-5.) The Court recognized that defendant's BMI, if accurately reported, "may indeed place him at increased risk for severe illness from COVID-19," but found that the 18 U.S.C. § 3553(a) factors did not favor a sentence reduction and thus denied Marquez's motion. (ECF No. 712.)

Approximately seven weeks later, the Court received a letter from Marquez and construed it as a motion for reconsideration of the Court's January 20, 2021 Order. (ECF No. 728.) Because defendant failed to provide "controlling decisions or data that the court

overlooked" in its prior Order, the Court denied the motion for reconsideration. Order, ECF No. 728 (citing *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

II. DISCUSSION

Defendant now brings his fourth request for a sentence reduction, which the Court denies.

A. Consideration of Extraordinary and Compelling Reasons

Marquez's health conditions, in light of the current COVID-19 risks at FCI Fort Dix, do not constitute an "extraordinary and compelling reason" to alter defendant's sentence. Previously, the Court recognized that defendant's BMI, if accurately reported, "may indeed place him at increased risk for severe illness from COVID-19." (ECF No. 712 at 2.) However, at the time, the Court made no finding that "Marquez's alleged obesity, in conjunction with the conditions at Fort Dix, constitute 'extraordinary and compelling reasons' for granting a sentence reduction." (ECF No. 712 at 2.)

In the intervening months, Marquez's chronic health conditions do not appear to have worsened. Marquez's fourth motion restates the chronic health conditions that he previously identified and that the Court already considered: obesity, asthma, and chronic lumbar pain. (ECF No. 748 at 30.) Defendant previously conveyed his need to use "an Albuterol inhaler . . . at least 4 times daily to prevent an asthma attack," (ECF No. 706 at 3.) and he now states that he "has daily asthmatic symptoms and uses his inhaler daily." (ECF No. 748 at 44.) The Court notes that Marquez is able to freely access medication for his asthma condition and is thus able to attend to his asthma needs at FCI Fort Dix.

While Marquez's chronic health conditions have apparently not worsened, the COVID-19 situation at FCI Fort Dix has improved. At this time there are zero reported cases among prisoners and only six staff with active COVID-19 infections. *COVID-19 Cases*, Fed. Bureau Prisons, <https://www.bop.gov/coronavirus/> (last updated Sept. 2, 2021).

Marquez states that "the BOP still has not provided medical treatment as directed by the Court." (ECF No. 748 at 22, 36.) Accordingly, the Bureau of Prisons is again directed to provide Marquez with all appropriate medical treatment for his asthma and lower back pain issues.

B. Consideration of 18 U.S.C. § 3553(a) Factors

Even if Marquez had established extraordinary and compelling reasons supporting a sentence reduction, which he has not, the Court would still need to find that the section 3553(a) factors favor a sentence reduction. For the reasons set forth in this Court's Order from earlier this year, the Court again concludes that the section 3553(a) factors do not support a sentence reduction as follows:

Marquez had participated in “a massive drug-trafficking organization” that “distributed millions of dollars of crack cocaine and powder cocaine throughout New York City.” *United States v. Davis*, No. 12-CR-712, 2020 WL 3790562, at *1 (S.D.N.Y. July 7, 2020). Marquez himself “was responsible for supplying drugs to the organization, sourcing dozens of kilograms of cocaine.” *United States v. Marquez*, No. 12-CR-712, 2020 WL 4016840, at *2 (S.D.N.Y. July 16, 2020). Moreover, the Court sentenced Marquez to 120 months’ incarceration—far below the recommended guidelines range of 168 to 210 months—and he has simply served approximately six and a half years of that sentence to date. *See id.*

(ECF No. 712 at 2.)

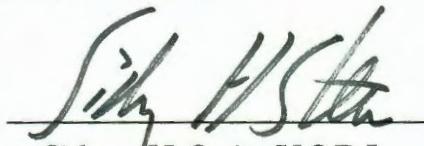
C. Conclusion

For the reasons set forth above, the Court denies Pedro Marquez’s motion for a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A).

The Court directs the Clerk of Court to mail a copy of this Order to defendant at: Pedro Marquez [67875-054], FCI Fort Dix, Federal Correctional Institution, P.O. Box 2000, Joint Base MDL, NJ 08640, and to the Warden of Fort Dix at: FCI Fort Dix, Federal Correctional Institution, P.O. Box 38, Joint Base MDL, NJ 08640.

Dated: New York, New York
September 9, 2021

SO ORDERED:



Sidney H. Stein, U.S.D.J.